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LETTER DATED 9 JUNE 1999 FROM THE SECRETARY-GENERAL TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to refer to the attached letter dated 7 June 1999 which I have received from the Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, Justice Louise Arbour (see annex). I would be grateful if you could have the present letter and its annex circulated among the members of the Security Council.

The competence of the International Tribunal in investigating possible war crimes in Kosovo has already been confirmed by the Security Council in four resolutions, most significantly in resolution 1160 (1998) of 31 March 1998.

In her letter, the Prosecutor has outlined the requirements facing her office in the light of developments in Kosovo and the need to carry out forensic investigations as soon as international forces are allowed to enter the area. In view of the scale of the required operations and the need to act swiftly, the Prosecutor has concluded that the only way to allow immediate investigations is through the use of gratis personnel. Consequently, she has asked my approval for seeking and accepting up to 300 gratis personnel from Member States, who would perform specialized functions relating to forensic investigations.

The Prosecutor has insisted on expeditiousness in this operation and I believe her concerns for immediate action are fully justified. In comparison to the investigations of the International Tribunal in Bosnia and Herzegovina, where access to crime sites was not possible until months or years after the fact, the immediate presence of forensic investigative teams in Kosovo would put the International Tribunal in a much better position to secure crime sites and gather evidence before these are tainted or lost. Immediate action would facilitate the collection of crucial evidence within a short span of time and enable the fulfilment of the International Tribunal's mandate in an efficient, effective and timely way.

It is therefore my intention to approve the request of the Prosecutor of the International Tribunal to proceed with issuing invitations to all Member States to offer gratis personnel, and to accept experts for the specialized

functions as identified by the Prosecutor, for a period of six months, and in accordance with the regime for gratis personnel established by the General Assembly.

I have also forwarded the Prosecutor's letter to the President of the General Assembly.

(Signed) Kofi A. ANNAN
Secretary-General

Annex

Letter dated 7 June 1999 from the Prosecutor of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the Secretary-General

Following discussions last week between the Registrar of the International Tribunal for the former Yugoslavia, Mrs. Dorothee de Sampayo, the Deputy Prosecutor, Mr. Graham Blewitt, and Secretariat officials in New York, I am writing to request your assistance in the matter of carrying out forensic investigations in Kosovo.

Four Security Council resolutions have called upon the Prosecutor of the International Tribunal to conduct investigations in Kosovo: resolutions 1160 (1998) of 31 March 1998; 1199 (1998) of 23 September 1998; 1203 (1998) of 24 October 1998; and 1207 (1998) of 17 November 1998.

However, as you know recent events have created an entirely new and overwhelming situation, one that could not have been anticipated and one with which the Prosecutor's Office is unable to cope. Due to the scale of destruction, and the widespread abuses of human rights reported in Kosovo, the International Tribunal will have to deal with an unprecedented quantity of tasks once it is possible to enter Kosovo. If the Tribunal is to fulfil its mandate by any basic standards, it is anticipated that it will be necessary to undertake and complete separate crime scene examinations at more than 16 sites in Kosovo. I must point out, however, that this preliminary assessment is based on the information now available. The actual size of the task before us will have to be determined once access to the area is possible.

Moreover, the investigations will have to be carried out at very short notice, and must commence as soon as safety permits. The main lesson that has been learned from International Tribunal investigations in Bosnia and Herzegovina is that the Office of the Prosecutor must be in a position to commence its on-site crime scenes investigations as soon as access is possible and before essential evidence is lost forever. We will only have one opportunity to complete these on-site investigations.

As I indicated, the initial aspect of this work is to undertake on-site crime scene examinations. To do this work, multifaceted investigation teams involving forensic and other specialists will be required to gather and record evidence at the various crime scenes that have been prioritized by this Office. The teams will need to contain capabilities in the areas of ballistic and explosives assessment, weapons and munitions identification, crime scene assessment, evidence-gathering, and ethnic cleansing assessment. It will also be essential to maintain the integrity of any evidence available at the crime scenes and, in this regard, it will be necessary to complete much of the investigative work in a very short period of time, preferably before the refugees return to their homes and villages (which, in most instances, will be crime scenes). Finally, to ensure that it will be possible to adduce admissible

and reliable testimony at future trials before this Tribunal, these teams mus undertake the work on the Prosecutor's behalf and under my direction.

The Office of the Prosecutor does not have the capacity or the expertis required for this scale of operations, nor any ability to undertake such extensive crime scene investigations at such short notice. Neither did the Tribunal's budget allocation for 1999 provide for the massive level of urgent investigative capacity that is outlined herein, particularly the level of specialized expertise required for the task. Responding to the early resolutions in 1998, a supplementary budget was approved to enable investigat activity in Kosovo to begin. Although modest, the budget enabled us to establish a team of 10 persons dedicated to Kosovo investigations. This tea comprises investigators, lawyers, analysts and translators and will continue work on the Kosovo investigations. However, they have no expertise in foren work.

We have considered this matter carefully and we believe that the immens task with which we have so suddenly been confronted can be achieved only wit the urgent assistance from Member States. What we require is the assistance several national investigation teams with the capabilities outlined above, t undertake on-site crime scene examinations in Kosovo as soon as it is possib to gain access to the region. It is likely that forensic investigation team with the capabilities we require are available at the national level and can assembled at fairly short notice.

In order to carry out the work we have prioritized, we envisage the formation of approximately 12 forensic investigation teams. Though at this stage it is not possible to identify the exact number of personnel that woul required to staff these teams, the preliminary projection is that a total of approximately 300 experts may be needed. We estimate the work would be completed by experts within a maximum period of six months, as the window of opportunity is narrow: before the return of the refugees and before the ons of winter.

We have given much thought to the question of how to link these teams t the work of the Tribunal and a number of options have been examined. Two prerequisites are considered essential. The first is that the forensic investigation teams require the proper authority under which to conduct thei investigations in Kosovo and the second is that they would conduct their investigations under the general control and direction of the Prosecutor's Office.

We have determined that the only viable way in which to address both requirements would be to involve national investigation teams in this urgent task under the gratis personnel regime of the United Nations. This regime i specifically created to urgently provide highly specialized functions not available within the Organization, on a temporary and exceptional basis. It enables Member States to make expertise available to the Organization and to link that expertise to the Organization itself. In this way, both the proble of authority and that of control are overcome.

I am fully aware of the fact that the quantity of the prospective personnel involved in this urgent operation is exceptional. I am also cognizant of the difficulties that the Tribunal has had with the gratis personnel regime. However, we see no other way in which we can effectively and adequately conduct the investigations required by the Security Council and the Statute of the Tribunal. If approved, we will adhere strictly to the provisions of the General Assembly resolution and write to all Member States requesting their assistance.

I would be most grateful if you would consider this request. I am available at any time to discuss this matter and to provide more information, as needed. I look forward to hearing from you at your earliest convenience.

(Signed) Louise ARBOUR
Prosecutor